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98TH CONGRESS
1st Session

SENATE

REPORT
No. 98-254

PROVIDING FOR CERTAIN DESERT LAND ENTRYMEN IN THE STATE OF IDAHO

SEPTEMBER 29 (legislative day, SEPTEMBER 26), 1983.—Ordered to be printed

Mr. MCCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 482]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 482) to provide relief for certain desert land entrymen in the State of Idaho, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

S. 482, as reported, would reinstate 26 desert land entries specified in the bill and would allow the entrymen, or their heirs or assigns, within 6 months from the effective date of S. 482, to rescind any agreements to which they might now be a party that are prohibited by the Secretary's interpretation of 43 U.S.C. 329. Those individuals would also be allowed until December 31 in the third year following the effective date of S. 482 to resubmit final proof of reclamation and cultivation of the land in accordance with the applicable provisions of the Desert Land Act. The bill requires that upon making final proof, patents would be issued to the named parties without further payment.

S. 482 specifies that prior to issuance of a patent, the property right to the lands of any person named in the bill whose entry is reinstated shall be a personal right, inheritable but not assignable. However such entries could be mortgaged to secure repayment of the funds borrowed for development of the entry or for farm operation or crop production expenses.

BACKGROUND

The two projects affected by S. 482 are located near the Snake River in Elmore County, Idaho. The Black Mesa Project consists of 14 desert land entries covering 4,458 contiguous acres and the Sailor Creek Proj-

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ect consists of 12 desert land entries comprising approximately 3,790 acres of land. Both projects were initiated in 1963. Under the Desert Land Act (43 U.S.C. 329) these individuals filed for entry to 320 acre parcels of land. Applications for all of the entries were approved in 1964 and final proof of reclamation and final payments to the United States were made for Sailor Creek in 1964 and Black Mesa in 1965. Subsequently, these entries were invalidated as a result of actions taken by the Department of the Interior.

The Sailor Creek entries were farmed under 2-year leases, with two, 5-year renewal options (one entry was leased originally only for 1964). The Black Mesa entries were farmed under 1-year verbal agreements, following cancellation of 10-year operating agreements that had been made in reliance of the Bureau of Land Management (BLM) Director's 1964 decision in the *Indian Hills* case. At that time, the Department had no regulations concerning leases or farming contracts for desert land entries. However, it did have a regulation expressly authorizing mortgages on desert entries.

Decisions of the Department made between 1891 and 1910, and still in effect in 1964, stated that desert entrymen did not have to live on the land, that all the required work could be done by an agent and did not have to be done by the entryman, and that other parties could assist in financing the work so long as there was no agreement to transfer title to the person providing the financing. Accordingly, in both projects the farm operators received mortgages to secure payment of the development costs.

The Black Mesa farm operating contracts were made only after the BLM issued its 1964 decision in the *Indian Hill* case approving long-term leases and mortgages for the development and farming of another desert entry project, and after BLM officials had been consulted about permissible arrangements.

In May 1966, for Sailor Creek, and July 1967 for Black Mesa, almost 2 years after final payment was made, the BLM filed contest complaints against the entrymen on grounds that they had violated the 320-acre holding limitation. In the *Sailor Creek* case, the Administrative Law Judge who heard testimony ruled in favor of the entrymen. However, that decision was overruled by the Interior Board of Land Appeals (IBLA) on the basis of its own interpretation of section 329. In a suit for judicial review, the United States District Court held that, while the Department's interpretation of the Act was a proper one, it was unfair for the IBLA to apply that interpretation retroactively to the entries and that the entrymen should have been given an opportunity to comply with the new interpretation. The Court of Appeals for the Ninth Circuit reversed the District Court and interpreted section 329 as permitting no latitude for modifying contractual arrangements to comply with the new interpretations. A second appeal was decided against the entrymen and the United States Supreme Court denied certiorari. In the *Black Mesa* case, the Administrative Law Judge and the IBLA rule against the entrymen. The District Court confirmed that the entries must be forfeited on the basis of the decision by the Ninth Circuit in the *Sailor Creek* case. The District Court decision in the *Black Mesa* case was affirmed by the Ninth Circuit.

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LEGISLATIVE HISTORY

S. 482 was introduced on February 15, 1983. A hearing before the Subcommittee on Public Lands and Reserved Water was held on June 23, 1983. The Administration opposes the enactment of S. 482. In an open business session on August 4, 1983, the Senate Committee on Energy and Natural Resources ordered S. 482 reported favorably without amendment.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources in an open business session on August 4, 1983, by a majority vote of a quorum present recommends the Senate pass S. 482 without amendment.

The rollcall vote on reporting the measure was 16 yeas and 3 nays as follows:

YEAS	NAYS
Mr. McClure	Mr. Metzenbaum [1]
Mr. Hatfield	Mr. Tsongas
Mr. Weicker [1]	Mr. Bradley
Mr. Domenici	
Mr. Wallop	
Mr. Warner	
Mr. Murkowski	
Mr. Nickles	
Mr. Hecht	
Mr. Chafee	
Mr. Heinz [1]	
Mr. Johnston	
Mr. Jackson	
Mr. Bumpers	
Mr. Ford	
Mr. Matsunaga [1]	

[1] Indicates voted by proxy.

SECTION-BY-SECTION ANALYSIS

Section 1 contain six Congressional findings regarding two farming projects known as Black Mesa and Sailor Creek, which were developed under the provisions of the Desert Land Act of March 3, 1877, as amended.

Section 2 lists the names and assignees of the entrymen to which the provisions of S. 482 would apply.

Section 3 would reinstate 26 desert land entries specified in the bill and would allow the entrymen, or their heirs or assigns, within 6 months from the effective date of S. 482, to rescind any agreements to which they might be a party that are prohibited by the Secretary's interpretation of 43 U.S.C. 329. These individuals would also be allowed until December 31 in the third year following the effective date of S. 482 to resubmit final proof of reclamation and cultivation of the land in accordance with the Desert Land Act. Section 3 also provides for the issuance of patents upon showing of final proof.

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Section 4 defines the nature of the property right prior to the issuance of a patent as a personal right, inheritable but not assignable. Entries can be mortgaged for specific purposes.

Section 5 states the Act is limited in scope and applies only to the identified entrymen and the Act does not modify the Desert Land Act.

COST AND BUDGETARY CONSIDERATION

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 12, 1983.

Hon. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 482, a bill to provide relief to certain desert land entrymen in the State of Idaho, as ordered reported by the Senate Committee on Energy and Natural Resources, August 4, 1983.

This bill reinstates 26 desert land entries and allows time for the specified parties to comply with the Desert Land Entry Act in order to become eligible for patents on the affected lands. If S. 482 is not enacted, it is expected that the land in question would be offered for sale by the federal government and that assessed trespass fees would be charged against the entrymen. Enactment of this bill would preclude both the sale of the land and collection of the trespass charges. Assuming that all of the affected lands would have been sold, and that all the assessed charges would have been collected in the absence of the bill, it is estimated, based on information from the Bureau of Land Management, that a total of approximately $3 million in receipts will be lost by the Federal Government as a result of enactment of S. 482. If some of the lands could not be sold or some of the trespass charges not collected, the loss of receipts would be less.

Enactment of this bill would not affect the budgets of state and local governments.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

RUDOLPH G. PENNER,
Director.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 482 as reported. S. 482 would provide relief for certain desert land entrymen in the State of Idaho.

The bill is not a regulatory measure in the sense of imposing Government established standards or significant economic responsibilities on private individuals or businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 482.

EXECUTIVE COMMUNICATIONS

On May 23, 1983, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth executive views on S. 482. These reports had not been received at the time the report on S. 482 was filed. When the reports become available, the chairman will request that they be printed in the Congressional Record for the advice of the Senate.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law would be made by the bill, S. 482 as ordered reported.

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